

Introduced by Senator Battin

February 22, 2005

An act to amend Section 372 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 669, as introduced, Battin. Electricity: cogeneration.

Existing law declares that the policy of the state is to encourage and support the development of cogeneration as an efficient, environmentally beneficial, competitive energy resource that enhances the reliability of local generation supply, and promotes local business growth.

This bill would declare that it is the further policy of the state to encourage private capital investment in customer generation to increase the state's energy supply, to provide tools to customers to manage their energy costs, and to reduce the need for distribution and transmission investments.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 372 of the Public Utilities Code is
- 2 amended to read:
- 3 372. (a) It is the policy of the state to encourage and support
- 4 the development of cogeneration as an efficient, environmentally
- 5 beneficial, competitive energy resource that will enhance the
- 6 reliability of local generation supply, and promote local business
- 7 growth. *It is the further policy of the state to encourage private*
- 8 *capital investment in customer generation to increase the state's*

1 *energy supply, to provide tools to customers to manage their*
2 *energy costs, and to reduce the need for distribution and*
3 *transmission investments.* Subject to the specific conditions
4 provided in this section, the commission shall determine the
5 applicability to customers of uneconomic costs as specified in
6 Sections 367, 368, 375, and 376. Consistent with this state
7 policy, the commission shall provide that these costs shall not
8 apply to any of the following:

9 (1) To load served onsite or under an over the fence
10 arrangement by a nonmobile self-cogeneration or cogeneration
11 facility that was operational on or before December 20, 1995, or
12 by increases in the capacity of a facility to the extent that the
13 increased capacity was constructed by an entity holding an
14 ownership interest in or operating the facility and does not
15 exceed 120 percent of the installed capacity as of December 20,
16 1995, provided that prior to June 30, 2000, the costs shall apply
17 to over the fence arrangements entered into after December 20,
18 1995, between unaffiliated parties. For the purposes of this
19 subdivision, “affiliated” means any person or entity that directly,
20 or indirectly through one or more intermediaries, controls, is
21 controlled by, or is under common control with another specified
22 entity. “Control” means either of the following:

23 (A) The possession, directly or indirectly, of the power to
24 direct or to cause the direction of the management or policies of
25 a person or entity, whether through an ownership, beneficial,
26 contractual, or equitable interest.

27 (B) Direct or indirect ownership of at least 25 percent of an
28 entity, whether through an ownership, beneficial, or equitable
29 interest.

30 (2) To load served by onsite or under an over the fence
31 arrangement by a nonmobile self-cogeneration or cogeneration
32 facility for which the customer was committed to construction as
33 of December 20, 1995, provided that the facility was
34 substantially operational on or before January 1, 1998, or by
35 increases in the capacity of a facility to the extent that the
36 increased capacity was constructed by an entity holding an
37 ownership interest in or operating the facility and does not
38 exceed 120 percent of the installed capacity as of January 1,
39 1998, provided that prior to June 30, 2000, the costs shall apply

1 to over the fence arrangements entered into after December 20,
2 1995, between unaffiliated parties.

3 (3) To load served by existing, new, or portable emergency
4 generation equipment used to serve the customer's load
5 requirements during periods when utility service is unavailable,
6 provided the emergency generation is not operated in parallel
7 with the integrated electric grid, except on a momentary parallel
8 basis.

9 (4) After June 30, 2000, to any load served onsite or under an
10 over the fence arrangement by any nonmobile self-cogeneration
11 or cogeneration facility.

12 (b) Further, consistent with state policy, with respect to
13 self-cogeneration or cogeneration deferral agreements, the
14 commission shall do the following:

15 (1) Provide that a utility shall execute a final self-cogeneration
16 or cogeneration deferral agreement with any customer that, on or
17 before December 20, 1995, had executed a letter of intent (or
18 similar documentation) to enter into the agreement with the
19 utility, provided that the final agreement shall be consistent with
20 the terms and conditions set forth in the letter of intent and the
21 commission shall review and approve the final agreement.

22 (2) Provide that a customer that holds a self-cogeneration or
23 cogeneration deferral agreement that was in place on or before
24 December 20, 1995, or that was executed pursuant to paragraph
25 (1) in the event the agreement expires, or is terminated, may do
26 any of the following:

27 (A) Continue through December 31, 2001, to receive utility
28 service at the rate and under terms and conditions applicable to
29 the customer under the deferral agreement that, as executed,
30 includes an allocation of uneconomic costs consistent with
31 subdivision (e) of Section 367.

32 (B) Engage in a direct transaction for the purchase of
33 electricity and pay uneconomic costs consistent with Sections
34 367, 368, 375, and 376.

35 (C) Construct a self-cogeneration or cogeneration facility of
36 approximately the same capacity as the facility previously
37 deferred, provided that the costs provided in Sections 367, 368,
38 375, and 376 shall apply consistent with subdivision (e) of
39 Section 367, unless otherwise authorized by the commission
40 pursuant to subdivision (c).

(3) Subject to the firewall described in subdivision (e) of Section 367, provide that the ratemaking treatment for self-cogeneration or cogeneration deferral agreements executed prior to December 20, 1995, or executed pursuant to paragraph (1) shall be consistent with the ratemaking treatment for the contracts approved before January 1995.

(c) The commission shall authorize, within 60 days of the receipt of a joint application from the serving utility and one or more interested parties, applicability conditions as follows:

(1) The costs identified in Sections 367, 368, 375, and 376 shall not, prior to June 30, 2000, apply to load served onsite by a nonmobile self-cogeneration or cogeneration facility that became operational on or after December 20, 1995.

(2) The costs identified in Sections 367, 368, 375, and 376 shall not, prior to June 30, 2000, apply to any load served under over the fence arrangements entered into after December 20, 1995, between unaffiliated entities.

(d) For the purposes of this subdivision, all onsite or over the fence arrangements shall be consistent with Section 218 as it existed on December 20, 1995.

(e) To facilitate the development of new microcogeneration applications, electrical corporations may apply to the commission for a financing order to finance the transition costs to be recovered from customers employing the applications.

(f) To encourage the continued development, installation, and interconnection of clean and efficient self-generation and cogeneration resources, to improve system reliability for consumers by retaining existing generation and encouraging new generation to connect to the electric grid, and to increase self-sufficiency of consumers of electricity through the deployment of self-generation and cogeneration, both of the following shall occur:

(1) The commission and the Electricity Oversight Board shall determine if any policy or action undertaken by the Independent System Operator, directly or indirectly, unreasonably discourages the connection of existing self-generation or cogeneration or new self-generation or cogeneration to the grid.

(2) If the commission and the Electricity Oversight Board find that any policy or action of the Independent System Operator unreasonably discourages the connection of existing

1 self-generation or cogeneration or new self-generation or
2 cogeneration to the grid, the commission and the Electricity
3 Oversight Board shall undertake all necessary efforts to revise,
4 mitigate, or eliminate that policy or action of the Independent
5 System Operator.

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